

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GREAT AMERICAN INSURANCE COMPANY OF  
NEW YORK,

Plaintiff,

07 CIV 6421 (PAC)(THK)

- against -

ADVANCE OCEAN INC., NIPPON YUSEN  
KAISHA, NYK LINE (NORTH AMERICA) INC.,  
BURLINGTON NORTHERN SANTA FE  
CORPORATION, BNSF RAILWAY COMPANY,  
THE BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY,

Defendants.

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**DECLARATION OF ARJAY G. YAO  
IN SUPPORT OF DEFENDANTS' MOTION FOR  
TRANSFER OF VENUE PURSUANT TO 28. U.S.C. § 1404 (a)**

**ARJAY G. YAO**, hereby declares, pursuant to 28 U.S.C. § 1746, the following under penalty  
of perjury:

1. I am an attorney admitted to practice before the Courts of the Southern District of New York and an associate of the law firm of Landman Corsi Ballaine & Ford P.C., attorneys for defendants BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF RAILWAY COMPANY, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (“BNSF”) and NIPPON YUSEN KAISHA, NYK LINE (NORTH AMERICA) INC. (“NYK Line”) and I am familiar with the facts and circumstances herein from my review of the file.

2. I submit this Declaration and the accompanying Memorandum of Law in support of defendants BNSF and NYK Line’s Motion to Transfer Venue from the Southern District of New

York to the Central District of California.

3. In its Amended Complaint, dated August 21, 2007, plaintiff alleges that it is an “insurer under the laws of the State of New York which provided insurance coverage herein. Plaintiff’s assured, Maclean Power Systems, was the owner of a cargo of insulators shipped on defendants’ railroad.” Plaintiff “sues for damage to a cargo of insulators from Elwood, Illinois to Los Angeles.” Plaintiff alleges that “[d]efendants are operators of a railroad doing business as a common carriers by rail in interstate commerce, and governed by 49 U.S.C. 11706.” *See* Plaintiff’s Amended Complaint, ¶¶ 1-2, 4, attached hereto as **Exhibit A**.

4. On or about September 10, 2007, defendant BNSF interposed an Answer denying the allegations set forth in the Amended Complaint and raising affirmative defenses. *See* BNSF’s Answer, attached hereto as **Exhibit B**.

5. On or about September 24, 2007, defendant NYK Line interposed an Answer denying the allegations set forth in the Amended Complaint and raising affirmative defenses. *See* NYK Line’s Answer, attached hereto as **Exhibit C**.

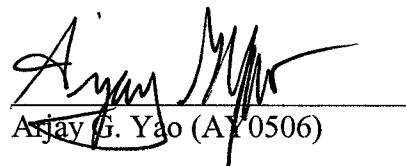
6. BNSF, a Delaware corporation, has its principal place of business in Fort Worth, Texas. BNSF operates an extensive rail network which serves the Midwest, Pacific Northwest and the Western, Southwestern and Southeastern regions of the country. BNSF’s largest intermodal facility is located at Hobart Yard in Los Angeles, California. The map of BNSF’s rail network shows that BNSF’s rail operations do not extend through New York. *See* Excerpts from BNSF’s Form 10-K, pages i, 6-8, attached hereto as **Exhibit D**.

7. The BNSF Intermodal Rules & Policies Guide “governs the transportation of equipment in intermodal service by means of intrastate, interstate and foreign commerce. This

document specifies rules governing intermodal transportation on BNSF Railway Company ... or transportation by BNSF as part of a continuous intermodal movement and is subject to modification or cancellation at any time.” *See* Excerpt from BNSF’s Intermodal Rules & Policies Guide, attached hereto as **Exhibit E**, at page 9, Item 1. These Intermodal Rules contain a venue provision which specifies where claims may be brought against BNSF. Specifically, Item 65(4) provides that “[a]ll loss or damage suits filed against BNSF shall be filed in a United States Federal District Court in the location of the shipment’s origination or termination on BNSF.” *See* **Exhibit E**, at page 74, Item 65(4).

8. NYK Line has its company headquarters in Tokyo, Japan. *See* Hoover’s Company Profile of NYK Line, attached hereto as **Exhibit F**. NYK Line also maintains an office in Los Angeles, California. *See* Office Network Profile obtained from NYK Line’ website, attached hereto as **Exhibit G**.

9. While NYK Line (North America) maintains an office in New York, this office is used solely for the purpose of accepting process from the New York Department of State. *See* New York Department of State Entity Information, attached hereto as **Exhibit H**.



Asjay G. Yao (AY0506)

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK )  
                      )  
                      ) ss.:  
COUNTY OF NEW YORK )

**MIRIAM DEIKUN**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at QUEENS, NEW YORK.

That on the 1<sup>st</sup> day of February, 2008, deponent served the within **DECLARATION OF ARJAY YAO IN SUPPORT OF DEFENDANTS' MOTION FOR TRANSFER OF VENUE PURSUANT TO 28 U.S.C. §1404(a)**

upon

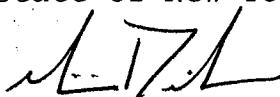
STATE OF NEW YORK

KINGSLEY KINGSLEY & CALKINS  
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91 West Cherry Street  
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Attn: Kevin T. Murtagh, Esq.

STATE OF NEW YORK

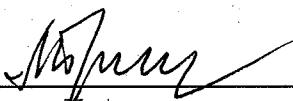
JUNGE & MELE LLP  
Attorneys for Advance Ocean, Inc.  
29 Broadway, 9<sup>th</sup> Floor  
New York, New York 10006  
Attn: Peter Junge, Esq.

attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Miriam Deikun

Sworn to before me this  
1<sup>st</sup> day of February 2008

  
\_\_\_\_\_  
Notary

JELENA BRIGIDA  
Notary Public, State of New York  
No. 01BR6156932  
Qualified in Kings County  
Commission Expires Dec. 4, 2010